

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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TALITA SANTOS,

Plaintiffs,

Civil Docket No.: TBD

**NOTICE OF REMOVAL**

-against-

DANIELA PERALTA & ERMIC AVIATION LLC,

Defendant.

-----X

**TO: CLERK OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF  
NEW YORK:**

**PLEASE TAKE NOTICE** that Defendants, **DANIELA PERALTA & ERMIC AVIATION LLC**, by their attorneys, **MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN**, remove this case from the Supreme Court of the State of New York, County of Queens to United States District Court, Eastern District of New York, and in support of said removal state, under penalty of perjury:

1. A civil action brought in a state court of which the District Courts of the United States have original jurisdiction may be removed by the defendants to the District Court of the United States for the district and division embracing the place where such action is pending. 28 U.S.C. §1441(a).
2. 28 U.S.C. §1446 requires that a defendant who wants to remove a civil action to file a notice of removal together with copies of all process, pleadings, and orders served upon it.
3. The grounds for removal are based on the original jurisdiction of this Court under 28 U.S.C. §1332, which allows this Court to hear matters based on diversity of citizenship of the parties.

**RELEVANT PROCEDURAL HISTORY**

4. A civil action was commenced by the plaintiff, TALITA SANTOS, against **DANIELA PERLATA & ERMIC AVIATION LLC**, in the Supreme Court of the State of New York, County of Queens, Index No.: 710221/2022 by filing on May 11, 2022. (See Summons and Complaint annexed hereto as **Exhibit "A"**).

5. Defendants **DANIELA PERLATA & ERMIC AVIATION LLC**, were purportedly served with the Summons and Complaint on May 20, 2022 and May 21, 2022, respectively. (See Affidavits of Service annexed hereto as **Exhibit "B"**). Defendants e-filed/served an Answer on June 10, 2022 (See Answer annexed hereto as **Exhibit "C"**).

6. Importantly, plaintiff's counsel advised, for the first time, on June 14, 2022, via an "other paper pre-removal correspondence e-mail" that the amount in controversy will certainly satisfy and exceed the jurisdictional threshold of \$75,000. See *Rositani v Cochran*, 20-CV-8273, 2020 WL 7384531, at \*2 [SDNY Dec. 16, 2020] and *Moltnr v Starbucks Coffee Co.*, 624 F3d 34, 37-38, 2010 WL 4291299 [2d Cir 2010]. (See E-mail from Plaintiff's Counsel Daniel J. Watts of Morgan & Morgan NY PLLC on June 14, 2022 at 2:42 p.m., annexed hereto as **Exhibit "D"**).

7. Accordingly, this original Notice of Removal is made timely pursuant to statute and interpreting case law within 30 days of confirming the amount in controversy qualifies. See *Rositani v Cochran*, 20-CV-8273, 2020 WL 7384531, at \*2 [SDNY Dec. 16, 2020] (holding that informal pre-removal e-mail correspondence between the parties satisfies the "other paper" requirement of 28 U.S.C. § 1446(b)(3) regarding scienter of jurisdictional amount in controversy).



**GROUND FOR REMOVAL**

8. The grounds for removal are based on the original jurisdiction of this Court under 28 U.S.C. §1332, which allows this Court to hear matters based on diversity of citizenship of the parties.

9. The individual named defendant DANIELA PERALTA, is a resident/domiciled in New York, *both at the time of the commencement of the action and the time of this removal*, by virtue of both her personal address, 20615 86<sup>th</sup> Road, Apt. 1A, Queens Village, NY 11427 as see on the Summons in Exhibit A and confirmed by the in-person Affidavit of Service in Exhibit B.

10. The named entity defendant ERMIC AVIATION LLC, *both at the time of the commencement of the action and the time of this removal*, was and is a limited a limited liability company organized under Delaware law, with its principal place of business at 3399 Peachtree Rd., NE, Suite 1500, Atlanta, Georgia 30326. “An unincorporated association [LLC] shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.” 28 U.S.C. § 1332(d)(10). A limited liability company is an “unincorporated association”. *See Irwin v. Jimmy John’s Franchise, LLC*, 175 Supp.3d 1064, 1068 n.2 (C.D. I11 2016) (“unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.” 28 U.S.C. § 1332(d)(10); *Young v. Integrity Healthcare Communities, LLC*, ----F. Supp.3d ----, 2021 WL 148736, at \*5 (S.D. I11. Jan. 15, 2021). Under 28 U.S.C. § 1332(d)(10). Accordingly, ERMIC AVIATION, LLC is a dual citizen of both Delaware and Georgia for diversity purposes.

11. Attached hereto as Exhibit E is the Delaware Secretary of State Certificate of Formation for ERMIC Aviation, LLC dated and filed effective October 24, 2017 (as well as Certificate of Merger of Gateway Aviation Services, LLC into ERMIC dated and filed effective October 31, 2019) depicting in the recitals that the executed Agreement is on file at the principal place of business of the surviving company ERMIC at 3390 Peachtree Road, NE, Atlanta, GA 30326.

12. Some courts have continues to analyze citizenship under the traditional rule, under which an LLC is a citizen of every state of which any member of the LLC citizen. *See e.g., Halperin v. International Web Services, LLC*, 70 F. Supp.3d 893, 904 (N.D. Ill. 2014) (*citing IP of A West 86<sup>th</sup> Street 1, LLC v. Morgan Stanley Mortg. Capital Holdings, LLC*, 686 F.3d 361, 363 (7<sup>th</sup> Cir. 2012)).

13. Under the traditional rule, ERMCAVIATION LLC is also a citizen of Delaware and Georgia for diversity purposes. The sole member of ERMCAVIATION LLC. is AirCo Aviation Services, LLC (“AirCo”). Attached hereto as Exhibit F is the Delaware Secretary of State Certificate of Formation for AirCo Aviation Services, LLC dated and filed effective November 13, 2018. The members of AirCo are: a) Delta Air Lines, Inc. (“Delta”); b) Scrub Holdings, Inc.; and c) Argenbright Holdings IV, LLC. All have the same dual Delaware and Georgia citizenship.

14. Delta is a Delaware corporation with its principal place of business in Atlanta, Georgia. A corporation is “a citizen of every [s]tate . . . by which it has been incorporated and of the [s]tate . . . where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). Thus, Delta is a citizen of Delaware and Georgia for purposes of diversity jurisdiction ***both at the time of the commencement of the action and the time of this removal.***

15. Scrub Holdings, Inc. is a Delaware corporation with its principal place of business in Georgia. Scrub Holdings, Inc. is a citizen of Delaware and Georgia for diversity purposes ***both at the time of the commencement of the action and the time of this removal.***

16. Argenbright Holdings IV, LLC is a limited liability company. The sole member of Argenbright Holdings IV, LLC is Argenbright Holdings III, LLC. The sole member of Argenbright Holdings III, LLC is Argenbright Holdings II, LLC. The sole member of Argenbright Holdings II, LLC is Argenbright Holdings I, LLC. The members of Argenbright Holdings I, LLC are Frank A. Argenbright, Jr., Kathleen B. Argenbright, and the FAA, Jr. Family Trust. Frank A. Argenbright, Jr. and Kathleen B.



Argenbright are citizens of Georgia. Regarding the FAA, Jr. Family Trust, “the citizenship of a trust is the citizenship of its trustee.” *Guar. Nat. Title Co. v. J.E.G. Assocs.*, 101 F.3d 57, 59 (7th Cir. 1996); *see also White Pearl Inversiones S.A. (Uruguay) v. Cemusa, Inc.*, 647 F.3d 684, 686 (7th Cir. 2011) (“Businesses organized as trusts don’t have their own citizenship; they take the citizenship of the trustee (or citizenships, if there are multiple trustees).”). The trustee of the FAA, Jr. Family Trust is Kathleen B. Argenbright. Ms. Argenbright is a citizen of Georgia. Thus, Argenbright Holdings IV, LLC is a citizen of Georgia for diversity purposes *both at the time of the commencement of the action and the time of this removal*.

17. Based on the above, ERMCI AVIATION LLC. is a citizen of Georgia and Delaware for diversity purposes. Accordingly, diversity exists under 28 U.S.C. § 1332. Defendants are more than happy to provide the Court with further proofs herein concerning the LLC members if found to be ultimately necessary beyond the averments herein and reserve the right to do so.

17. Of course, the plaintiff’s Summons alleges that Plaintiff is a natural person and a resident and citizen of the State of Florida with an address of 8451 Gate Parkway West, Apt. 447, Jacksonville, FL 32216 at *both at the time of the commencement of the action and the time of this removal*. See Exhibit A.

18. As indicated above, Defendants now believe in good-faith that the amount in controversy exceeds \$75,000.00 exclusive of interest and costs based on plaintiff’s counsel’s representation.

### CONCLUSION

19. Removal of this action to the United States District Court is proper under 28 U.S.C. §1441(a) because, upon bona fide good faith information from plaintiff’s counsel, the amount in controversy exceeds \$75,000, exclusive of interests and costs, and because there is complete diversity of citizenship between the

plaintiff and defendants. The United States District Court would, therefore, have original jurisdiction over this matter under 28 U.S.C. §1332 had the action been brought in federal court originally.

20. Written notice of the filing of this Notice of Removal has been given to all parties in accordance with 28 U.S.C. §1446(d), as evidenced in the annexed Certificate of Service.

21. Simultaneously while filing this Notice with the Court and the assignment of a Civil Docket number, a copy of this Notice will be filed with the Supreme Court of the State of New York, County of Queens in accordance with 28 U.S.C. §1446(d) via New York State Courts Electronic Filing (NYSCEF).

22. By filing this Notice of Removal, defendants do not waive any defenses, including, without limitation, lack of personal jurisdiction, improper venue or forum, failure to establish damages, all defenses specified in Federal Rules of Civil Procedure 12, or any other defenses.

**WHEREFORE**, the Defendants give notice that the above-referenced action, pending against it in the Supreme Court of the State of New York, County of New York, has been removed to this Court.

Dated: Purchase, New York  
June 15, 2022

**MARSHALL DENNEHEY WARNER  
COLEMAN & GOGGIN**



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Ephraim J. Fink, Esq. (EF5613)  
***Attorneys for Defendants Daniela Peralta and  
ERMC Aviation LLC***  
287 Bowman Avenue, Suite 404  
Purchase, New York 10577  
Phone: (914) 8-977-7300  
Direct Dial: (914) 977-7306  
Fax: (914) 977-7301  
Our File No.: 41138.00114  
E-mail: [EJFink@MDWCG.com](mailto:EJFink@MDWCG.com)

**TO: MORGAN & MORGAN NY PLLC**  
Daniel J. Watts, Esq. ([dwatts@forthepeople.com](mailto:dwatts@forthepeople.com))  
*Attorneys for Plaintiff*  
350 Fifth Avenue, Suite 6705  
New York, New York 10118  
Phone: (917) 344-7043  
Fax: (917) 344-7068



# EXHIBIT A



**FILED: QUEENS COUNTY CLERK 05/11/2022 07:23 PM**

NYSCEF DOC. NO. 1

INDEX NO. 710221/2022

RECEIVED NYSCEF: 05/11/2022

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS**SUMMONS**

TALITA SANTOS,

Plaintiff,

-against-

DANIELA PERALTA &amp; ERMIC AVIATION LLC,

Defendants.

Index No.:

Date Purchased/Filed:

Plaintiff designates

**QUEENS**County as the  
place of trial.**The basis of the venue is:**

Place of occurrence

**Plaintiff resides at:**8451 Gate Pkwy W. Apt. 447  
Jacksonville, FL 32216

To the above-named defendants,

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 30 days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York  
May 11, 2022

/s/ Daniel J. Watts  
DANIEL J. WATTS, ESQ.  
MORGAN & MORGAN NY PLLC  
350 Fifth Avenue, Suite 6705,  
New York, NY 10118  
(917) 344-7041

**Defendants' addresses:**

DANIELA PERALTA  
20615 86<sup>th</sup> Rd Apt. 1A  
Queens Village, NY 11427

ERMIC AVIATION LLC  
80 State Street  
Albany, NY 12207  
*Via Secretary of State*

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INDEX NO. 710221/2022

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 05/11/2022

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

TALITA SANTOS,

Plaintiff,

-against-

DANIELA PERALTA &amp; ERMIC AVIATION LLC,

Defendants.

Index No.:

**VERIFIED**  
**COMPLAINT**

Plaintiff, by and through his attorneys, **Morgan and Morgan New York PLLC**,  
complaining of the defendants herein, respectfully shows to the Court, and alleges as  
follows upon information and belief:

**AS AND FOR A FIRST CAUSE OF ACTION**

1. That at all times hereinafter mentioned, plaintiff, TALITA SANTOS, was, and still is, a resident of the County of Duval, State of Florida.
2. That at all times hereinafter mentioned, defendant, DANIELA PERALTA, was, and still is, a resident of the County of Queens, State of New York.
3. That at all times herein mentioned, the defendant, ERMIC AVIATION LLC, was and still is a foreign limited liability corporation, duly organized under and existing by virtue of the laws of the State of New York.
4. That at all times herein mentioned, defendant, ERMIC AVIATION LLC, was doing business in the State of New York.
5. That at all times hereinafter mentioned and on February 13, 2022, defendant, DANIELA PERALTA, was the driver, as defined in the Vehicle and Traffic Law Sec.128, of a certain motor vehicle known as a 2000 Gilli Bus bearing New York State plate number B00363.



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6. That at all times hereinafter mentioned, and on and prior to February 13, 2022, the defendant, DANIELA PERALTA, its agents, servants, employees and/or licensees, maintained the motor vehicle bearing New York State plate number B00363.
7. That at all times hereinafter mentioned, and on February 13, 2022, the defendant DANIELA PERALTA was an employee of the defendant, ERMIC AVIATION LLC.
8. That at all times hereinafter mentioned, and on February 13, 2022, the defendant, DANIELA PERALTA, operated and controlled the motor vehicle bearing New York license plate number B00363.
9. That at all times hereinafter mentioned, and on February 13, 2022, the defendant, DANIELA PERALTA, operated and controlled the motor vehicle bearing New York license plate number B00363 with the permission and consent of her employer, ERMIC AVIATION LLC.
10. That at all times hereinafter mentioned, and on February 13, 2022, the defendant, DANIELA PERALTA, operated and controlled the motor vehicle bearing New York license plate number B00363 while acting within the scope of her employment with ERMIC AVIATION LLC.
11. That at all times hereinafter mentioned and on February 13, 2022, the plaintiff, TALITA SANTOS, was a pedestrian on the marked crosswalk with the traffic signal in her favor upon the Terminal Two (2) entrance Roadway in the John F. Kennedy International Airport, County of Queens, State of New York.
12. That on February 13, 2022, at said location upon the Terminal Two (2) entrance Roadway in the John F. Kennedy International Airport, County of Queens, State of New York, defendant, DANIELA PERALTA, failed to observe plaintiff, TALITA SANTOS, a pedestrian, when she should have.

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13. That on February 13, 2022, at said location upon the Terminal Two (2) entrance Roadway in the John F. Kennedy International Airport, State of New York, the defendant's aforesaid motor vehicle encountered and struck the plaintiff, TALITA SANTOS, a pedestrian.

14. That the aforesaid encounter and injuries resulting therefrom, were due solely and wholly to the careless and negligent manner in which the defendant, DANIELA PERALTA, operated and controlled their said motor vehicle without the plaintiff, TALITA SANTOS, in any way contributing thereto.

15. That by reason of the foregoing and the negligence of the said defendant, DANIELA PERALTA, this plaintiff, TALITA SANTOS, sustained serious, severe and permanent injuries necessity of future surgery all of which the plaintiff still suffers and will continue to suffer for some time, great physical and mental pain and serious bodily injury; became sick, sore, lame and disabled and so remained for a considerable length of time.

16. That by the reason of the foregoing and the negligence of the said defendant, DANIELA PERALTA, the plaintiff, TALITA SANTOS, was informed and verily believes that her aforesaid injuries are permanent and that she will permanently suffer from the effects of her aforesaid injuries and that she will be caused to suffer continuous pain and inconvenience.

17. That by reason of the foregoing, the plaintiff, TALITA SANTOS, was compelled and did necessarily require medical aid and attention and did necessarily pay and become liable therefore, for medicines and other related medical expenses and upon information and belief, the plaintiff will necessarily incur similar expenses.

18. That the plaintiff, TALITA SANTOS, sustained serious injuries as defined in the Insurance Law of the State of New York and has sustained economic loss greater than basic economic loss as defined in the Insurance Law of the State of New York.



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19. That this action falls within one of the exemptions listed in CPLR Section 1602.

**AS AND FOR A SECOND CAUSE OF ACTION**

Plaintiff repeats, reiterates and realleges each allegation as contained in the above paragraphs of the within Complaint, with the same force and effect, as though each were fully set forth at length herein.

20. That defendant ERMCAVIATION LLC, was negligent and careless in failing to exercise reasonable care and diligence in the hiring, training, screening, and supervision of its agents, servants, employees, and/or representatives.

21. That at all times hereinafter mentioned, and on and prior to February 13, 2022, the defendant, ERMCAVIATION LLC, knew or should have known defendant DANIELA PERALTA was incompetent and untrained to operate the aforesaid vehicle bearing New York license plate number B00363.

22. That as a result of the negligence of defendant, ERMCAVIATION LLC, the plaintiff sustained serious personal injuries as set forth above.

WHEREFORE plaintiff, TALITA SANTOS, demands judgment against each of the defendants DANIELA PERALTA and ERMCAVIATION LLC, each in an amount to be determined at the time of trial, together with the costs and disbursements of this action, which exceeds the jurisdiction of the lower courts.

Dated: New York, New York  
May 11, 2022

Respectfully Submitted,

/s/ Daniel J. Watts  
DANIEL J. WATTS, ESQ.  
MORGAN & MORGAN NY PLLC  
350 Fifth Avenue, Suite 6705,  
New York, NY 10118  
(917) 344-7041

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**ATTORNEY VERIFICATION**

**DANIEL J. WATTS**, an attorney duly licensed to practice in the courts of the State of New York, hereby affirms the following under penalties of perjury:

That I am associated with the law firm of **MORGAN & MORGAN NY, PLLC** attorneys for the plaintiff in the within action; that I have read the foregoing **SUMMONS AND VERIFIED COMPLAINT** and know the contents thereof; and that the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters, I believe them to be true. The reason this Verification is made by me and not by the plaintiff is that said claimants resides outside of the County in which the Affirmant's office is located.

The grounds of my belief as to all matters stated upon my own knowledge are as follows: the records, reports, contracts, and/or documents contained in the plaintiff's file.

**/s/ Daniel J. Watts**  
**DANIEL J. WATTS, ESQ.**  
**MORGAN & MORGAN**

Affirmed: May 11, 2022  
New York, NY



# EXHIBIT B

FILED: QUEENS COUNTY CLERK 06/02/2022 04:57 PM

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NYSCEF DOC. NO. 4

RECEIVED NYSCEF: 06/02/2022

ATTORNEY(s) : Morgan &amp; Morgan NY PLLC

INDEX # : 710221/2022

PURCHASED/FILED :

STATE OF : New York

COURT : Supreme

COUNTY/DISTRICT : Queens



P8718898

**AFFIDAVIT OF SERVICE - SECRETARY OF STATE**

Talita Santos

Plaintiff(s)

against

Daniela Peralta, et ano

Defendant(s)

STATE OF NEW YORK }  
COUNTY OF ALBANY } SS  
CITY OF ALBANY }**DESCRIPTION OF PERSON SERVED:**

Approx. Age: 60 yrs

Weight: 120 lbs Height: 5' 1" Sex: Female Color of skin: White

Hair color: Brown Other:

Robert Guyette, being duly sworn, deposes and says: deponent is over the age of eighteen (18) years; is not a party to this action, and resides in the State of NY, and that on May 20, 2022, at 12:55 PM, at the office of the Secretary of State of the State of NY, located at 99 Washington Ave, 6th Fl, Albany, New York 12231 deponent served: **Summons & Verified Complaint, Attorney Verification**

on

**ERMC Aviation LLC**

the Defendant in this action, by delivering to and leaving with

**Nancy Dougherty**

AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, personally at the Office of the Secretary of State of the State of New York, two (2) true copies thereof and that at the time of making such service, deponent paid said Secretary of State a fee of \$40 dollars; That said service was made pursuant to Section **LIMITED LIABILITY COMPANY LAW §303.**

Deponent further says that deponent knew the person so served as aforesaid to be the agent in the Office of the Secretary of State of the State of New York, duly authorized to accept such service on behalf of said defendant.

Sworn to before me on this

20th day of May 2022

FAITH O'CONNELL

NOTARY PUBLIC, State of New York  
No. 01CO8158674, Albany County  
Commission Expires Jan 8, 2023

Robert Guyette

Invoice-Work Order # 2217459  
Attorney File # 6718698



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NYSCEF DOC. NO. 3

RECEIVED NYSCEF: 06/02/2022

Form 1 - AFFIDAVIT OF SERVICE



P6718688

MORGAN & MORGAN, P.A. Leyry Romano x28432  
SUPREME COURT QUEENS COUNTY STATE OF NEW YORK

TALITA SANTOS

PLAINTIFF

- vs -

DANIELA PERALTA, ETAL

DEFENDANT

index No.  
710221/2022  
Date Filed  
Office No.  
Court Date.

STATE OF NEW YORK, COUNTY OF NASSAU :SS:

CALVIN CHEN being duly sworn, deposes and says; I am over 18 years of age, not a party to this action, and reside in the State of New York.

That on the 21ST day of MAY, 2022 2:57PM at

20615 86TH ROAD

APT. 1A

QUEENS VILLAGE NY 11427

I served the ATTORNEY'S VERIFICATION, SUMMONS AND VERIFIED COMPLAINT upon DANIELA PERALTA

the DEFENDANT therein named by delivering and leaving a true copy or copies of the aforementioned documents with DANIELA PERALTA said DEFENDANT personally.

Deponent describes the person served as aforesaid to the best of deponent's ability at the time and circumstances of the service as follows:

SEX: FEMALE COLOR: BROWN HAIR: BLACK

APP.AGE: 47 APP. HT: 5''3 APP. WT: 135

OTHER IDENTIFYING FEATURES

That at the time of service, as aforesaid, I asked the DEFENDANT whether he/she was in the military service of the United States Government, or of the State of New York, and received a negative reply. Recipient wore ordinary civilian clothes and no military uniform. Upon information and belief based upon the conversation and observation as aforesaid I aver that the DEFENDANT is not in the military service, and is not dependent on anyone in the military service of the United States Government or the State of New York, as that term is defined in statutes of the State of New York, or of the Federal Soldiers and Sailors Civilian Relief Act.

Sworn to before me this  
24TH day of MAY, 2022

JEFFREY RUBELL  
Notary Public, State of New York  
No. 01RU6216027  
Qualified in NASSAU COUNTY  
Commission Expires 01/11/2026

CALVIN CHEN 1416703  
Lexitas  
1235 BROADWAY 2ND FLOOR  
NEW YORK, NY 10001  
Reference No: 3-MMPA-6718688

2a

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Index No. 710221/2022

SUPREME COURT QUEENS COUNTY STATE OF NEW YORK

=====

TALITA SANTOS

PLAINTIFF

- against -

DANIELA PERALTA, ETAL

DEFENDANT

=====

ATTORNEY'S VERIFICATION, SUMMONS AND VERIFIED COMPLAINT

=====

MORGAN & MORGAN, P.A

350 5TH AVENUE, SUITE 6705

NEW YORK, NY 10118

212 564-4568



# EXHIBIT C

SUPREME COURT IF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X Index No.: 710221/2022  
TALITA SANTOS,

Plaintiffs,

**VERIFIED ANSWER**

-against-

DANIELA PERLATA & ERMIC AVIATION LLC,

Defendant.

-----X

Defendants, **DANIELA PERLATA & ERMIC AVIATION LLC**, by their attorneys,  
**MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN**, as and for their Verified Answer to  
plaintiff's Verified Complaint alleges as follows:

1. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs "1", "2" and "11", of the plaintiff's Verified Complaint, and respectfully refer all questions of law to the Court.

2. Deny in the form alleged the allegations contained in paragraphs "3", "4", "5", "6", "7", "8", "9", and "10", of the plaintiff's Verified Complaint, and respectfully refer all questions of law to the Court.

3. Deny each and every allegation contained in paragraphs "12", "13", "15", "16", and "17", of the plaintiff's Verified Complaint.

4. Deny each and every allegation contained in paragraphs "14", "18", and "19", of the plaintiff's Verified Complaint, and respectfully refer all question of law to the Court.



**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION**

5. Defendants repeat and reallege each and every denial set forth in paragraphs “1” through “19” of plaintiff’s Verified Complaint with the same force and effect as if fully set forth at length herein in response to unnumbered paragraph below the heading AS AND FOR A SECOND CAUSE OF ACTION.

6. Deny each and every allegation contained in paragraphs “20”, “21”, and “22”, of the plaintiff’s Verified Complaint.

**AS AND FOR A FIRST, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

7. That one or more of the causes of action set forth in plaintiff’s Verified Complaint fail to set forth a claim upon which relief can be granted as the answering defendants were not contractually obligated to plaintiff as such duty is defined by the law of the State of New York under the *Espinal* doctrine.

**AS AND FOR A SECOND, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

8. Plaintiff failed to mitigate and/or reduce their damages and loss, if any, as alleged in the Verified Complaint.

**AS AND FOR A THIRD, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

9. These answering Defendants claim the benefits and applicability of the provisions contained within Article 14 of the CPLR.

**AS AND FOR A FOURTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

10. That any liability to the plaintiff is limited by the provisions of Article 16 of the CPLR.

**AS AND FOR A FIFTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

11. In the event plaintiff recovers a verdict or judgment against these defendants, then said verdict or judgment must be reduced pursuant to CPLR §4545(c) by those amounts which have been or will, with reasonable certainty, replace or indemnify plaintiff in whole or in part, for any past future claimed economic loss, from any collateral source such as insurance, social security, Workers' Compensation or employee benefit programs.

**AS AND FOR A SIXTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

12. Pursuant to Section §15-108 of the General Obligations Law, to the extent plaintiff has given a release or covenant not to sue or not to enforce a judgment, defendants are relieved from any liability to any other defendants, person or entity for contribution and any recovery by plaintiff should be diminished accordingly.

**AS AND FOR A SEVENTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

13. Plaintiff's Verified Complaint must be dismissed as it fails to comply with CPLR 3017 (c).



**AS AND FOR AN EIGHTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

14. One or more of plaintiff's causes of action fail to state a cause of action upon which relief can be granted and, therefore, must be dismissed.

**AS AND FOR A NINTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

15. That the damages allegedly suffered by the injured plaintiff was caused in whole or in part by the culpable conduct of the injured plaintiff if any. The plaintiff's claims are therefore barred or diminished in the proportion that such culpable conduct of the injured plaintiff bears to the total culpable conduct causing the damages.

**AS AND FOR A TENTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

16. Defendants acted appropriately in light of the emergency situation presented to its employees immediately before and at the time of the occurrence alleged in the Verified Complaint.

**AS AND FOR AN ELEVENTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

17. The negligent acts set forth in plaintiff's Verified Complaint were committed by third parties over which these answering defendants had no control or right of control.

**AS AND FOR A TWELFTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

18. The plaintiff, if she may have sustained any injuries at the time and place, and upon the occasion mentioned in the Verified Complaint, assumed the risk of sustaining same under the conditions and circumstances then existing and obvious.

**AS AND FOR A THIRTEENTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

19. That the damages allegedly suffered by the plaintiff was caused in whole or in part by the culpable conduct of the plaintiff herself. The plaintiff's claim is therefore barred or diminished in the proportion that such culpable conduct of the injured plaintiff bears to the total culpable conduct causing the damages.

**AS AND FOR A FOURTEENTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

20. That the plaintiff intentionally, negligently and recklessly caused the accident by his failure to exercise due care and caution under the circumstances.

**AS AND FOR A FIFTEENTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

21. That plaintiff created the unsafe condition of the location of the Motor Vehicle Accident.

**AS AND FOR A SIXTEENTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

22. Plaintiff's actions were the sole cause of the incident as alleged by plaintiff in her Verified Complaint.



**AS AND FOR A SEVENTEENTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

23. Failure of the plaintiff to comply with the provisions of the Vehicle and Traffic Law of the State of New York, pertaining to pedestrian traffic.

**AS AND FOR AN EIGHTEENTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

24. Failure of the plaintiff to comply with the signage and lights on the area of the event.

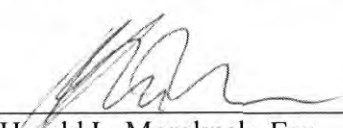
**AS AND FOR A NINETEENTH, SEPARATE AND  
DISTINCT AFFIRMATIVE DEFENSE, THESE  
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

25. Plaintiff did not sustain a "serious injury" sufficient to satisfy the no-fault threshold as prescribed by the Insurance Law of the State of New York. Plaintiff's claims are barred and precluded by Article 51, Sections 5101, 5102, 5103 and 5104 of the New York State Insurance Law.

**WHEREFORE**, defendants demand judgment dismissing plaintiff's verified complaint against them, together with the costs and disbursements of this action, and for any expenses incurred by them in the defense thereof, including attorneys' fees actually expended.

Dated: Purchase, New York  
June 10, 2022

**MARSHALL DENNEHEY WARNER  
COLEMAN & GOGGIN**

  
\_\_\_\_\_  
Harold L. Moroknek, Esq.  
*Attorneys for Defendants*  
287 Bowman Avenue, Suite 404  
Purchase, NY 10577  
(914) 977-7316

FILED: QUEENS COUNTY CLERK 06/10/2022 01:27 PM

INDEX NO. 710221/2022

NYSCEF DOC. NO. 5

RECEIVED NYSCEF: 06/10/2022

TO: DANIEL J. WATTS, ESQ.  
*Daniel J. Watts, Esq.*  
*Attorney for Plaintiff*  
350 Fifth Avenue, Suite 6705  
New York, NY 10118  
(917) 344-7041



**ATTORNEY'S VERIFICATION**

**HAROLD L. MOROKNEK**, affirms under the penalties of perjury that he is a shareholder of the firm of **MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN**, attorneys for defendants in the captioned action; that he has read the foregoing **VERIFIED ANSWER** and knows the contents thereof; that the same is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

The reason this verification is made by your affirmant and not by the defendants herein is that the defendants are not in the County of Westchester where the undersigned has his office.

The sources of your affirmant's information and belief are from conversations had with the defendants herein and from the documents contained in the affirmant's file.

Dated: Purchase, New York  
 June 10, 2022

  
**HAROLD L. MOROKNEK**

# EXHIBIT D



**Fink, Ephraim J.**

---

**From:** Daniel Watts x28433 <dwatts@forthepeople.com>  
**Sent:** Tuesday, June 14, 2022 2:42 PM  
**To:** Fink, Ephraim J.  
**Cc:** Johnson, Courtney C.  
**Subject:** Re: TALITA SANTOS V. Daniela Peralta and ERMCA Aviation, LLC (Queens County Index No.: 710221/2022)(Our File Matter No.: 41138.00114)

**WARNING: This email originated outside MDWCG**  
Sorry I missed your call

Yes case is worth over 75k. She's still treating.

[Get Outlook for iOS](#)

**Daniel Watts**  
Attorney

**P:** (917) 344-7043  
**F:** (917) 344-7068  
**A:** 350 Fifth Avenue, Suite 6705, New York, NY 10118

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*A referral is the best compliment. If you know anyone that needs our help, please have them call our office 24/7.*

---

**From:** Fink, Ephraim J. <EJFink@MDWCG.com>  
**Sent:** Tuesday, June 14, 2022 2:37:10 PM  
**To:** Daniel Watts x28433 <dwatts@forthepeople.com>  
**Cc:** Johnson, Courtney C. <CCJohnson@MDWCG.com>  
**Subject:** \*EXT\* RE: TALITA SANTOS V. Daniela Peralta and ERMCA Aviation, LLC (Queens County Index No.: 710221/2022)(Our File Matter No.: 41138.00114)

**CAUTION: Use caution when clicking on links or opening attachments in this external email.**

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Daniel,

See below. Can we hear from you on this? What are your client's injuries? I am assuming you will claim they exceed the \$75,000 jurisdictional amount in controversy for purposes of diversity jurisdiction removal. The clock does not start ticking for the removal until you respond.

Best,  
E.J.

**Ephraim J. Fink**

*Attorney at Law*

287 Bowman Ave., Suite 404, Purchase, NY 10577

Direct: (914) 977-7306 | Main: (914) 977-7300 | Fax: (914) 977-7301

[bio](#) | [e-mail](#) | [website](#)



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**From:** Moroknek, Harold L. <HLMoroknek@MDWCG.com>

**Sent:** Thursday, June 9, 2022 11:30 AM

**To:** [dwatts@forthepeople.com](mailto:dwatts@forthepeople.com)

**Cc:** Fink, Ephraim J. <EJFink@MDWCG.com>; Sabini, Sheila M. <SMSabini@MDWCG.com>

**Subject:** TALITA SANTOS

Good morning sir.

Harold L. Moroknek here counsel for the defendants in the above captioned matter.

I wanted to reach out in an effort to determine the details of the case including specifics relative to the plaintiffs claimed damages in this case.

That is to say, are the plaintiffs' claims valued to be in excess of \$75,000?

In any case, can you kindly advise as to what the plaintiff's damages are so as to provide us with a basis to determine if the case in controversy prong of the test has been satisfied for FEDERAL COURT removal. As you know,

The case seems to have diversity for removal purposes.

I appreciate your kind attention to this matter.

Very best

HLM

**Harold L. Moroknek**

*Managing Attorney, Westchester, NY Office*

*Co-Chair, Trucking & Transportation Practice Group*

287 Bowman Ave., Suite 404, Purchase, NY 10577

Direct: (914) 977-7316 | Main: (914) 977-7300 | Fax: (914) 977-7301

[bio](#) | [e-mail](#) | [website](#)



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# EXHIBIT E



# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "ERMC AVIATION LLC" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF FORMATION, FILED THE TWENTY-FOURTH DAY OF OCTOBER, A.D. 2017, AT 3:36 O'CLOCK P.M.

CERTIFICATE OF MERGER, FILED THE THIRTY-FIRST DAY OF OCTOBER, A.D. 2019, AT 12:54 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE THIRTY-FIRST DAY OF OCTOBER, A.D. 2019 AT 11:51 O'CLOCK P.M.

CERTIFICATE OF CHANGE OF REGISTERED AGENT, FILED THE SEVENTH DAY OF JANUARY, A.D. 2021, AT 3:38 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID LIMITED LIABILITY COMPANY, "ERMC AVIATION LLC".

A handwritten signature in black ink, reading "JBullock", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State

6581261 8100H  
SR# 20221283680

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 203082502  
Date: 04-04-22

# Delaware

The First State

Page 2



6581261 8100H  
SR# 20221283680

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

A handwritten signature in black ink, appearing to read "JBullock", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Jeffrey W. Bullock, Secretary of State

Authentication: 203082502  
Date: 04-04-22



**CERTIFICATE OF FORMATION  
OF  
ERMC AVIATION LLC**

This Certificate of Formation of ERMCAVIATION LLC is executed by the undersigned Authorized Person for the purpose of forming a limited liability company pursuant to the provisions of Section 18-201 and Section 18-204 of the Delaware Limited Liability Company Act.

1. The name of the limited liability company is:

ERMC Aviation LLC

2. The address of its registered office in the State of Delaware is 1209 Orange Street, New Castle County, Wilmington, Delaware 19801, and its registered agent for service of process at such address is The Corporation Trust Company.

3. This document shall become effective when the document is filed by the Secretary of State.

**IN WITNESS WHEREOF**, the undersigned has duly executed this Certificate of Formation on this 24th day of October, 2017.

By: 

Henry Cleland  
Authorized Person

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 12:54 PM 10/31/2019  
FILED 12:54 PM 10/31/2019  
SR 20197840136 - File Number 6581261

CERTIFICATE OF MERGER

OF

GATEWAY AVIATION SERVICES LLC  
(a Delaware limited liability company)

WITH AND INTO

ERMC AVIATION LLC  
(a Delaware limited liability company)

Pursuant to Section 18-209 of the Delaware Limited Liability Company Act (the “DLLCA”), the undersigned limited liability company, organized and existing under and by virtue of the DLLCA, does hereby certify:

FIRST: That the parties to the merger (the “Constituent Companies”) are Gateway Aviation Services LLC, a limited liability company organized and existing under the laws of the State of Delaware, and ERMC Aviation LLC, a limited liability company organized and existing under the laws of the State of Delaware.

SECOND: That the Plan and Agreement of Merger, dated as of October 31, 2019 (the “Merger Agreement”), by and among the Constituent Companies constitutes a plan of merger within the meaning of Section 18-209 of the DLLCA.

THIRD: That the Plan and Agreement of Merger has been approved and executed by each of the Constituent Companies in accordance with the requirements of subsection (b) of Section 18-209 of the DLLCA.

FOURTH: That the surviving limited liability company is ERMC Aviation LLC (the “Surviving Company”), a Delaware limited liability company.

FIFTH: That (i) the Certificate of Formation of the Surviving Company shall be the Certificate of Formation of the merged company and shall not be amended or restated in connection with or as a result of the merger and (ii) the name of the Surviving Company shall continue to be “ERMC Aviation LLC”.

SIXTH: That this Certificate of Merger shall become effective at 11:51 p.m. on October 31, 2019 (the “Effective Time”).


SEVENTH: That the executed Agreement is on file at the principal place of business of the Surviving Company at 3390 Peachtree Road, NE, Atlanta, Georgia 30326.

EIGHTH: That a copy of the executed Agreement will be furnished by the Surviving Company on request, without cost, to any member of the Constituent Companies.



IN WITNESS WHEREOF, ERMCA Aviation LLC has caused this Certificate of Merger to be signed by its authorized officer on the 31st day of October, 2019.

ERMCA Aviation LLC  
(a Delaware limited liability company)

By:   
Name: Frank A. Argenbright Jr.  
Title: Executive Chairman

STATE OF DELAWARE  
CERTIFICATE OF AMENDMENT CHANGING ONLY THE  
REGISTERED OFFICE OR REGISTERED AGENT OF A  
LIMITED LIABILITY COMPANY

The limited liability company organized and existing under the Limited Liability Company Act of the State of Delaware, hereby certifies as follows:

1. The name of the limited liability company is \_\_\_\_\_  
ERMIC AVIATION LLC \_\_\_\_\_.
2. The Registered Office of the limited liability company in the State of Delaware is changed to 251 Little Falls Drive \_\_\_\_\_  
\_\_\_\_\_ (street), in the City of Wilmington \_\_\_\_\_,  
Zip Code 19808 \_\_\_\_\_. The name of the Registered Agent at such address upon whom process against this limited liability company may be served is \_\_\_\_\_  
Corporation Service Company \_\_\_\_\_.

By: /S/ Scott Strobridge \_\_\_\_\_  
Authorized Person

Name: Scott Strobridge \_\_\_\_\_  
Print or Type



# EXHIBIT F

# Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED ARE TRUE AND CORRECT COPIES OF ALL DOCUMENTS ON FILE OF "AIRCO AVIATION SERVICES, LLC" AS RECEIVED AND FILED IN THIS OFFICE.

THE FOLLOWING DOCUMENTS HAVE BEEN CERTIFIED:

CERTIFICATE OF FORMATION, FILED THE THIRTEENTH DAY OF NOVEMBER, A.D. 2018, AT 7:10 O`CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID LIMITED LIABILITY COMPANY, "AIRCO AVIATION SERVICES, LLC".

A handwritten signature of Jeffrey W. Bullock in black ink, written over a horizontal line.

Jeffrey W. Bullock, Secretary of State

7135122 8100H  
SR# 20195498780

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 203046118  
Date: 06-18-19



State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 07:10 PM 11/13/2018  
FILED 07:10 PM 11/13/2018  
SR 20187620155 - File Number 7146850

STATE OF DELAWARE  
CERTIFICATE OF FORMATION  
OF LIMITED LIABILITY COMPANY

The undersigned authorized person, desiring to form a limited liability company pursuant to the Limited Liability Company Act of the State of Delaware, hereby certifies as follows:

1. The name of the limited liability company is AirCo Aviation Services, LLC

2. The Registered Office of the limited liability company in the State of Delaware is located at Corporation Trust Center, 1209 Orange Street (street), in the City of Wilmington, Zip Code 19801. The name of the Registered Agent at such address upon whom process against this limited liability company may be served is The Corporation Trust Company

By: 

Authorized Person

Name: Autumn Summers

Print or Type

CIVIL DOCKET No.: TBD

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK

TALITA SANTOS,

Plaintiffs,

-against-

DANIELA PERALTA & ERMIC AVIATION LLC,

Defendants.

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**NOTICE OF REMOVAL**

---

**MARSHALL DENNEHEY WARNER COLEMAN & GOGGIN**  
*ATTORNEYS FOR DEFENDANTS*  
287 BOWMAN AVENUE, SUITE 404  
PURCHASE, NEW YORK 10577  
(914) 977-7300

---

PURSUANT TO 22 NYCRR 130-1.1, THE UNDERSIGNED, AN ATTORNEY ADMITTED TO PRACTICE IN THE COURTS OF NEW YORK STATE, CERTIFIES THAT, UPON INFORMATION AND BELIEF AND REASONABLE INQUIRY, THE CONTENTIONS CONTAINED IN THE ANNEXED DOCUMENT ARE NOT FRIVOLOUS.

DATED:

SIGNATURE \_\_\_\_\_  
PRINT SIGNER'S NAME:

SERVICE OF A COPY OF THE WITHIN  
DATE:

IS HEREBY ADMITTED.

\_\_\_\_\_  
ATTORNEY(S) FOR